

Court of Appeals, State of Michigan

ORDER

Jacqueline Harris v Mark T Harris

Docket No. 297272

LC No. 00-009198-DM

Kirsten Frank Kelly
Presiding Judge

Michael J. Talbot

Elizabeth L. Gleicher
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion to file a reply brief is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the February 26, 2010, order of the Wayne Circuit Court hereby is VACATED to the extent that it referred the parties to the Family Evaluation Mediation and Counseling Unit (FEMC). A party seeking a change in custody, as plaintiff does here, must prove by a preponderance of the evidence that the trial court has proper cause to engage in a reevaluation of the best interest factors under statute. *Vodvarka v Grasmeyer*, 259 Mich App 499, 512; 675 NW2d 847 (2003). Plaintiff thus has the burden to prove that, since the most recent custody order, conditions that could have a significant impact on the children's well-being have changed. See *id.* at 513. The record before this Court is devoid of any factual findings made by the trial court on the record to merit a referral to the FEMC. The case is REMANDED to the circuit court for an articulation of the specific circumstances, if any, that are material to the best interests of the children and that have changed.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 06 2010

Date

Sandra Schultz Mengel
Chief Clerk